

No. 3075-58 CIVIL ACTION

Lees-

## VERSUS

Fisher



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

**DEC 5 1958**

**HARRY M. HULL, CLERK**

JAMES LEES AND SONS COMPANY,  
Bridgeport, Pa. Plaintiff

v.

ARTHUR FISHER, Register of  
Copyrights, Defendant

CIVIL ACTION NO.

**3075-58**

COMPLAINT FOR DECLARATORY JUDGMENT AND ORDER

1. Plaintiff, James Lees and Sons Company, is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, having a place of business in Bridgeport, Montgomery County, Pennsylvania.

2. Defendant, Arthur Fisher, is the Register of Copyrights of the United States, having his office in the Library of Congress, in the City of Washington, District of Columbia.

3. This action arises under the Copyright laws of the United States (Title 17, United States Code), and this court has jurisdiction of this action under and by virtue of Section 10 of the Administrative Procedure Act, Title 5 U.S.C. § 1009, and the Judicial Code, Title 28, United States Code §§ 1338 (a), 1400 (a), 2201 and 2202.

4. During the year 1957 Henry F. Nowicki, an employee of James Lees and Sons Company, created a design for a soft floor covering which was designated "Bel Canto", and by reason of said Henry F. Nowicki's employment, James Lees and Sons Company became the proprietor of all right, title and interest in said design.

5. On July 16, 1957, plaintiff first placed on sale, sold and publicly distributed soft floor coverings with the "Bel Canto" design, specimens of which are ready in court to be produced. Said floor coverings with the design "Bel Canto" were marked with a notice of copyright as follows: Design Copyright 1957 by James Lees And Sons Company, Bridgeport, Pennsylvania.

6. On August 15, 1957, plaintiff deposited in the Copyright Office, Library of Congress, Washington, D.C., cuttings of floor coverings with said "Bel Canto" carpet design, and the fees prescribed by statute, and with a request on a form G application, prescribed by defendant for copyright registration, that the same be registered as a work of art.

7. By letters dated September 25 and December 16, 1957, addressed to plaintiff, the Register of Copyrights, by his agent, the Chief of the Examining Division of the Copyright Office, refused to register the plaintiff's claim of copyright in said design as a work of art, and by a letter of July 22, 1958, defendant, the Register of Copyrights, on reconsideration, once again refused to register the copyright.

8. The plaintiff avers that it has fully complied with all the provisions of the Copyright Act relating to the registration of its claim of copyright in said work of art, and that it is legally entitled to have its claim of copyright registered in the Copyright Office; and that the action of the defendant in refusing to register said copyright has been contrary to law.

WHEREFORE plaintiff prays for:

1. A declaratory judgment that the "Bel Canto" design is a work of art under 17 U.S. Code, Section 5(g), and is entitled to be registered as such in the Copyright Office;
2. A declaratory judgment that plaintiff is entitled to the registration of said "Bel Canto" design;
3. An order directing defendant to effect such registration;
4. Such other relief as may appear equitable and just.

William A. Smith, Jr.  
William A. Smith, Jr.  
Woodward Building  
15th & H. Streets, N.W.  
Washington 5, D.C.

Of Counsel:

Howson & Howson  
By Kennard N. Ware and  
Charles M. Allen

Hyde W. Ballard



1-30  
DEC 5 1 37 PM '58  
U.S. MARSHAL

# United States District Court

FOR THE  
District of Columbia

CIVIL DIVISION

307558

CIVIL ACTION FILE NO. \_\_\_\_\_

JAMES LEES AND SONS COMPANY

Plaintiff

v.

ARTHUR FISHER  
Register of Copyrights

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon William A. Smith, Jr.,

plaintiff's attorney , whose address is Woodward Bldg, Wash, D.C.,

an answer to the complaint which is herewith served upon you, within <sup>60</sup>~~XX20~~ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

HARRY M. HULL

Clerk of Court.

*Walter E. Stuyk*  
Deputy Clerk.

Date: Dec. 5, 1958

[Seal of Court]

# RETURN ON SERVICE OF WRIT

day of

19 ,

I received this summons and served it together with the complaint herein as follows:

## MARSHAL'S FEES

Travel\_\_\_\_\_ \$\_\_\_\_\_

Service \_\_\_\_\_

*United States Marshal.*

By \_\_\_\_\_  
Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of \_\_\_\_\_, 19\_\_\_\_.

[SEAL]

**Note.**—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. \_\_\_\_\_

United States District Court

**FOR THE**

2.

# SUMMONS IN CIVIL ACTION

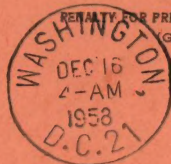
Returnable not later than  
after service.

*Attorney for Plaintiff.*

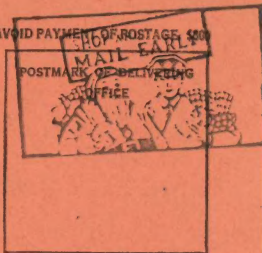
**FPI-LK-8-29-55-80M-2546**

CA 3075-58

**Post Office Department**  
OFFICIAL BUSINESS



PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE \$200  
(GPO)



Return to *U.S. Marshal*

(NAME OF SENDER)

Street and Number,  
or Post Office Box,

*Courthouse 3rd. & Cons. Rec*

REGISTERED ARTICLE **333338**

No. \_\_\_\_\_

INSURED PARCEL

**WASHINGTON,**

No. \_\_\_\_\_

**D. C.**

## RETURN RECEIPT

*Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.*

1

*Attorney General*

(Signature or name of addressee)

2

*George H. Vint*

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery

*1 27 15*, 19 *58*



U. S. MARSHAL'S RETURN OF SERVICE

United States of America

DISTRICT OF COLUMBIA

FILED

DEC 18 1958

HARRY M. HULL, CLERK

J. Lees & Sons Co.

Clerk's No. 3075-58

vs.

U. S. Marshal No.

Fisher

Received by U. S. M. (Date and time)

I hereby certify and return that I served the annexed Summons & Complaint (Writ) on the therein-named Oliver Lash U.S. District Attorney (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with

Mrs. Wall, Sec.

personally at U.S. Courthouse in the said District (Address—Street number, apartment number) (City)

at a. m.—p. m., on the 5 day of Dec., 19 58

Marshal's fees

Mileage

CARLTON G. BEALL

United States Marshal.

By Glenn Garner Deputy.

FILED

DEC 18 1958

HARRY M. HULL, CLERK

I hereby certify and return that I served the annexed Summons & Complaint (Writ) on the therein-named Attorney General (Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him

by registered mail

personally at Dept. Justice in the said District (Address—Street number, apartment number) (City)

at a. m.—p. m., on the 15 day of Dec., 19 55

Marshal's fees

Mileage

CARLTON G. BEALL

United States Marshal.

By Jeanette Anderson Deputy.

U. S. MARSHAL'S RETURN OF SERVICE

United States of America

DISTRICT OF COLUMBIA

FILED

DEC 18 1958

HARRY M. BULL, CLERK

James Lees & Sons Co.  
vs.  
Arthur Fisher

Clerk's No. CA 3075-58

U. S. Marshal No.

Received by U. S. M. (Date and time)

I hereby certify and return that I served the annexed Summons & Complaint  
on the therein-named Arthur Fisher  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with him

personally at Register of Copyrights Library of Congress in the said District  
(Address—Street number, apartment number) (City)  
at a. m.—p. m., on the 8 day of December, 1958

Marshal's fees

Mileage

CARLTON G. BEALL

United States Marshal.

By John W. Wmack

Deputy.

I hereby certify and return that I served the annexed  
on the therein-named  
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with

personally at in the said District  
(Address—Street number, apartment number) (City)  
at a. m.—p. m., on the day of, 19

Marshal's fees

Mileage

United States Marshal.

By

Deputy.



✓  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES LEES AND SONS COMPANY :

Plaintiff :

v. :

Civil Action No. 3075-58

ARTHUR FISHER, :

Register of Copyrights :

Defendant :

ANSWER TO COMPLAINT FOR  
DECLARATORY JUDGMENT AND ORDER

**FILED**

FEB 6 1959

HARRY M. HULL, Clerk

Comes now the defendant by and through his attorney, the United States Attorney, and in answer to the complaint avers as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Answering specifically the numbered paragraph of the complaint, defendant avers as follows:

1. Defendant is without knowledge or information sufficient to form a belief and, therefore, denies each and every allegation of paragraph 1.

2. Defendant admits that he is the Register of Copyrights of the United States and that his official residence is in the District of Columbia as stated in paragraph 2.

3. Defendant denies the allegations concerning jurisdiction in paragraph 3. Defendant further denies that plaintiff has a cause of action against the defendant.

4. Defendant is without knowledge or information sufficient to form a belief and, therefore, denies each and every allegation of paragraph 4, except that defendant further denies that the alleged design for a soft floor covering designated "Bel Canto" embodies copyrightable subject matter.

5. Defendant is without knowledge or information sufficient to form a belief and, therefore, denies each and every allegation of paragraph 5, except that defendant further denies that the alleged design for which registration is sought embodies copyrightable subject matter, and still further denies that any copyright was obtained by the alleged copyright notice.

6. Defendant admits that a FORM G APPLICATION FOR REGISTRATION OF A CLAIM TO COPYRIGHT IN A WORK OF ART, and the fee of \$4.00 were received in the Copyright Office on August 21, 1957, and that two articles entitled "BEL CANTO" and designated as a "Pile Floor Covering" were deposited on August 15, 1957; but defendant denies that said deposit constitutes a work of art, and further denies that Form G or any form is applicable to the deposit for which registration is here sought. Defendant denies all remaining allegations in paragraph 6.

7. Defendant admits that in letters dated September 26, 1957 and December 16, 1957, the registration of the claim to copyright in the "pile floor covering" here in issue as a "work of art" was refused by the Register of Copyrights, and that on July 22, 1958, upon further consideration by the Register of Copyrights, the claim was again refused registration. Defendant denies all remaining allegations of paragraph 7.

8. Defendant denies each and every allegation of paragraph 8, and in addition, asserts that plaintiff has not complied with the "notice" requirements of Title 17, United States Code. Defendant further asserts that even if plaintiff obtained a valid copyright (which



defendant denies), the right to copyright protection was thereafter lost through publication without the copyright "notice" required by the copyright laws.

#### Third Defense

Defendant asserts that the alleged "Bel Canto" design, designated "Pile Floor Covering" by the plaintiff, is not a "work of art" under Section 5 of the Copyright Act, and it is not entitled to registration by the Register of Copyrights under the copyright laws of the United States.

#### Fourth Defense

Defendant asserts that the "Pile Floor Covering" for which registration is sought, does not constitute the "writing" of an author or represent matter properly copyrightable under Article I, Section 8 of the Constitution and Title 17, United States Code.

#### Fifth Defense

Defendant asserts that the "Pile Floor Covering" "Bel Canto" for which registration is sought, is not, as claimed by the plaintiff, the "writing" of an author under the Constitution and laws of the United States, but rather represents an article of manufacture subject to protection, if any, under the Design Patent Laws, 35 U.S.C., Sections 171, 173, where the period of the monopoly runs for 14 years and not 56 years as would be the case if registration were permitted under the Copyright Laws.

#### Sixth Defense

Defendant asserts that designs for rugs have been, for many years, the subject of protection as design patents. By way of example, the following United States design patents are enumerated:

| NUMBER       | DATE     | PATENTEE        | SUBJECT MATTER           |
|--------------|----------|-----------------|--------------------------|
| Des. 91,223  | 12/19/33 | I. J. Vetter    | Design for a Rug         |
| Des. 91,206  | 12/19/33 | H. C. LaCouture | Design for a Rug         |
| Des. 102,826 | 1/19/37  | F. A. Haas      | Rug                      |
| Des. 114,814 | 5/16/39  | W. Hoos         | Rug                      |
| Des. 117,134 | 10/10/39 | G. V. Uihlein   | Rug                      |
| Des. 118,182 | 12/19/39 | G. C. Uihlein   | Rug                      |
| Des. 119,110 | 2/20/40  | L. Biva         | Rug                      |
| Des. 130,566 | 12/2/41  | L. Biva         | Rug                      |
| Des. 132,290 | 5/5/42   | H. E. Wadely    | Woven Pile Carpet Fabric |

#### Seventh Defense

Defendant asserts, upon information and belief, that the "Pile Floor Covering" "Bel Canto" for which copyright registration is sought, lacks the originality required by the copyright laws, and is not entitled to registration in the Copyright Office, nor susceptible of protection under the Copyright Laws.

WHEREFORE, defendant having fully answered demands judgment together with the costs of this suit.

*Oliver Gasch*

OLIVER GASCH  
United States Attorney

*Edward P. Troxell*

EDWARD P. TROXELL, Principal  
Assistant United States Attorney

*E. Riley Casey*

E. RILEY CASEY  
Assistant United States Attorney

*Robert J. Asman*

ROBERT J. ASMAN  
Assistant United States Attorney

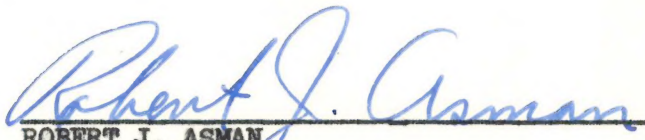
*H. L. Godfrey*

H. L. GODFREY  
Attorney, Department of Justice



CERTIFICATE OF SERVICE

Copy of the foregoing Answer to Complaint for Declaratory Judgment and Order was served on William A. Smith, Jr., Esquire, Attorney for Plaintiff, by mailing the same to him, postage prepaid, at his address: Woodward Building, 15th & H Streets, N. W., Washington 5, D. C., this 6<sup>th</sup> day of February, 1959.

  
ROBERT J. ASMAN  
Assistant United States Attorney

RECEIVED  
FEB 6 1959  
U.S. DEPT. OF JUSTICE

Civil No. 3075-58

JAMES LEES & SONS CO

Plaintiff,

VS.

FISHER

Defendant.

CAUSE CALENDARED

Feb. 6, 1959

Attorney for plaintiff:

William A. Smith, Jr.  
Woodward Bldg.

Attorney for defendant:

Oliver Gasch  
Edward P. Troxell  
E. Riley Casey  
Robert J. Asman  
H. L. Godfrey

U. S. Atty's Office

The suit is for DECLARATORY

JUDGMENT & ORDER

Harry M. Hull, Clerk

(A)



cut  
2-6-59  
PRAECIPE

United States District Court  
for the District of Columbia

3756-C  
FILED

JUN 22 1959

the 22nd day of June 1959 HARRY M. HULL, Clerk

JAMES LEES & SONS CO.

vs.

Civil  
Action No. 3075-58

ARTHUR FISHER

The Clerk of said Court will please enter the above-entitled cause  
dismissed with prejudice.

NO OBJECTION:

Robert J. Asman  
ROBERT J. ASMAN  
Assistant U.S. Attorney

William A. Smith, Jr.  
WILLIAM A. SMITH, JR.  
Address Woodward Bldg., Washington, D.C.

Attorney for Plaintiff